NO. 85-1281

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

HIBERNIA NATIONAL BANK IN NEW ORLEANS
Petitioner,

v.

CHUNG YONG IL, et al.
Respondents.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit correctly affirmed the award of statutory penalties to merchant seamen whose earned wages had been withheld without sufficient cause by the vessel owner, on the facts, consistent with the earlier decisions of this Court and the decisions of other circuits.

2. Whether the Eleventh Circuit correctly determined that the statutory penalties imposed under 46 U.S.C. §596 should continue to accrue for "each and every day" until the vessel owner finally made payment, as mandated by the plain wording of the statute.

3. Whether the Petition herein seeks to have this Court review only questions of fact decided adversely to the Petitioner below.

4. Whether the Petitioner can argue in good faith that it paid wages into Court or that it was in any way prevented from making payment of the earned wages that it did not dispute, at any time during the pendency of this case.

5. Whether there is any need for this Court to review that part of the Eleventh Circuit opinion which denied the Petitioner indemnity for statutory penalties which are imposed solely by reason of its own conduct.

LIST OF PARTIES

1. Chung, Yong Il and the officers and crew of the M/V BEAVER SPIRIT, O. Weon bog; Im, Gyeong Cheol; Gang, Hai Lyong; Jo, Yang Myung; You, Bong Gie; Yu, Dong Jyu; Yi, Hi Un; Kim, Tea Ik; Kim, Jeong Ro; Lee, bong Bum; Yu, Chang Bok; Im, Gwangg Su; Kim, gi Hwi; Jang, Ho Sam; Han, Jong Yeol; Sin, Gyeong U; Bak, Yeong Han; Song, Il Sick; Tak, Kil Ji; Jeo, Yu Ong; Son, cheol Geun; Lee, Jae Ho.

2. Hibernia National Bank in New Orleans

3. Overseas Navigation Company, Ltd.

4. Jimmy Mardikos

5. E.F.D. Capitol Group, Inc.

6. Frank Deutsch

7. The Petitioner has previously made full payment of the judgments rendered to Han Seung Shipping Co., Ltd., R. S. Price, and also to Captain Chung, Yong Il who was not awarded penalty wages, and those parties no longer have any interest in this action.

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents in this action, Chung Yong Il and the twenty-two seamen who were original Plaintiffs in the District Court, respectfully oppose the Petition for Writ of Certiorari. The decision below is fully consistent with the decisions of this Court and the decisions of the other circuits. Therefore, no reason exists for review of this case by the Supreme Court.

REPORTS OF OPINIONS BELOW

The Petition for Writ of Certiorari filed by Hibernia contains only a portion of the opinion of the District Court (Appendix D). Significantly omitted is the appendix to the corrected findings of fact and conclusions of law, which comprises a significant portion of the opinion entered by the District Court on February 9, 1983, specifying the exact amount awarded to each Respondent in earned wages. That portion of the District Court opinion is incorporated as Appendix A to the brief.

GROUNDS FOR JURISDICTION IN THE SUPREME COURT

This Court has discretion to grant certiorari jurisdiction under 28 U.S.C. §1254(1), but the decision of the Court below does not warrant grant of the writ upon any basis set out in Supreme Court Rule 17.1. There are no Constitutional questions involved in this case.

STATUTORY PROVISION INVOLVED

The only relevant statute in question is 46 U.S.C. §596. Statutes enacted after the accrual of the cause of action and after the decision of the District Court have no application herein.

STATEMENT OF THE CASE

In July, 1981, Hibernia National Bank was the owner of the M/V CARMEN A, a merchant cargo vessel which was then in the Port of Mobile, Alabama. Hibernia had entered into a contract to sell the vessel to E.F.D. Capitol Group, of New York. The navigational crew, the twenty-three individual Respondents herein, were brought to the vessel with the advance agreement and authorization of Hibernia. The crewing of the vessel was advantageous to Hibernia, because the Respondent crewmen could perform some of the repairs needed by Hibernia in order to

complete the documentation involved in its sale of the vessel.

It was also clearly the intention of all parties involved that the crew were to make the vessel ready to take on cargo and sail on a foreign voyage immediately upon the closing of the transaction between Hibernia and the buyers.

The evidence at trial was undisputed that the crew did prepare the vessel for the loading of a cargo, and that a charter had been arranged for the vessel for a voyage to a Caribbean port carrying a cargo of lumber. The cargo was at the dock, ready to be loaded. Hibernia itself refused to grant permission to load the cargo and refused to permit the voyage. The charter was thus lost, and the voyage frustrated.

Upon joining the vessel, the crew were employed in its service under a contract which was in evidence as that portion of Plaintiff's

Exhibit 10 labeled "Seamen Employment Regulations of the M/V BEAVER SPIRIT EX CARMEN A." The District Court found as a fact that this document was the contract covering the employment of the crew and the payment of their wages. Indeed, it was accepted as such by all parties at trial, including Hibernia.

The contract covers all aspects of the employment of the crew aboard the vessel, from the length of employment and wage rates to retirement age and termination pay. By its terms stated on the very first page of the contract, it became binding upon each of the crewmen "with the day of embarkation of the seaman on the vessel."

Hibernia did not contend at trial that any significance would be placed upon individual articles of employment. Indeed, Hibernia did not even ask whether the crew had signed separate articles of employment upon

joining the vessel. In the absence of any inquiry into this question of fact by Hibernia, we assume that they did.

Under the contract in evidence, and accepted by all parties, the crew were employed to sail the vessel on foreign voyages for a period of one year. They were prevented from doing so by events completely beyond their control. The sale to E.F.D. Capitol Group fell through, Hibernia retained its $50,000.00 cash deposit, and ordered the crew off of its ship. Hibernia flatly refused the crew's request for payment of their earned wages and repatriation expense.

Frustrated by Hibernia's refusal to meet its obligations as vessel owner, the Respondents filed this action on September 30, 1981. Their original complaint set forth their claims for wages earned during service aboard the vessel, as well as expense of repatriation, and set forth their claim for

penalty wages due them under 46 U.S.C. §596. The vessel was seized upon the in rem lien of the crew for earned wages. Hibernia later posted a letter of undertaking, in lieu of a bond guaranteed by separate surety, in order to obtain the release of its vessel from attachment, and to prevent judicial sale of the vessel in satisfaction of the wages owed to the crew. It immediately sold the vessel to another buyer for $350,000.00 cash.

Hibernia never contested the entitlement of the crew to recovery of the earned wages, nor the amounts owed to them pursuant to the contract. At the opening of the trial on February 8, 1983, Hibernia conceded that the crew were entitled to the recovery of their earned wages. [Trial transcript p. 20.] However, Hibernia had not paid the wages, had not offered to pay them, and had not deposited

into Court the sums due the crew which they did not contest.

On October 6, 1983, the District Court entered its original findings of fact and conclusions of law, and judgment, and entered its corrected opinion and judgment on February 9, 1984. The opinion and judgment awarded earned wages to the crew in the amounts stated in the original complaint, practically to the penny. In addition, the Court found that Hibernia was subject to the penalty wage provisions of 46 U.S.C. §596; it found that Hibernia had withheld payment of earned wages to the crew without sufficient cause; and it awarded statutory penalty wages. However, it terminated the accrual of penalty wages as of the date of trial, without reason, even though the earned wages had not been paid.

In its Petition herein, Hibernia has made a misrepresentation of the record, in its statement that the District Court judgment

lumped the amounts due the crewmen for wages, penalties and interest into "a single amount combining all elements of the award without delineation" [Petition p. 3], and implying that during appeal it was unable to determine the amounts of the earned wages which it did not contest. [Petition pp. 13-19] Further, in its Appendix to the Petition for Certiorari [Petition Appendix pp. A-44 - A-74], Hibernia omitted the appendix which was incorporated in the opinion of the District Court, setting out a specific itemization of the sums awarded to each crewman. That appendix of the District Court is incorporated as Appendix A to this brief. The amounts calculated by the Court come directly from the provisions of the employment contract in evidence as Plaintiff's Exhibit 10 and the payroll records identified at the deposition of Captain Chung on October 22, 1981. Hibernia has known all along the exact amount of its

liability for earned wages owed to the crewmen.

Prior to appeal, Hibernia amended its previous letter of undertaking, to increase it to an amount sufficient to cover the sums awarded by the District Court. On the strength of that undertaking, in lieu of a supercedeas bond, Hibernia obtained from the District Court an order staying execution on the judgment, so that it could avoid payment of any sums while it prosecuted an appeal to the Eleventh Circuit.

In its brief to the Eleventh Circuit, Hibernia conceded the correctness of the earned wages awarded to the crew and did not contest that portion of the judgment on appeal. Chung, Yong Il v. Overseas Navigation Co., 774 F. 2d at 1049. Incredibly, although Hibernia had not contested the earned wages at trial and did not contest them on appeal, it also did not make payment of the earned wages.

Nor did it pay the undisputed earned wages into the registry of the District Court, under the provisions of Rule 67 of the Federal Rules of Civil Procedure.

Ultimately, only three weeks before oral argument in the Eleventh Circuit, Hibernia made payment of the earned wages to counsel for the crewmen on February 21, 1985, such payment being calculated from the wage appendix incorporated in the opinion of the District Court. We filed partial satisfactions of the judgments, to the extent of such payment, which are incorporated in this brief as Appendix B.

In its unanimous opinion herein, the Eleventh Circuit correctly affirmed the findings of fact made by the District Court, rejected factual contentions raised by Hibernia on appeal, and correctly affirmed the award of penalty wages to the crew. Chung, Yong Il v. Overseas Navigation Co., 774 F. 2d

1043 (11th Cir. 1985). The Eleventh Circuit also was correct in its remand of the case to the District Court, for recalculation of the accrual of penalty wages through the date that the earned wages were paid, as is mandated by the statute and the decision of this Court in Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982). Motions for rehearing and rehearing en banc were unanimously rejected.

REASONS FOR DENIAL OF THE WRIT

I

IN ARGUING THAT THE CREWMEN IN THIS CASE WERE ON SIMPLE "PORT TIME" IN AN EFFORT TO AVOID THE PENALTY PROVISIONS OF 46 U.S.C. §596, AND IN ARGUING THAT INDIVIDUAL CONTRACTS OF EMPLOYMENT ARE NECESSARY TO THE AWARD OF PENALTIES, HIBERNIA SEEKS ONLY TO REHASH QUESTIONS OF FACT WHICH WERE DECIDED ADVERSELY TO IT OR NOT PROPERLY RAISED AT TRIAL. THERE IS NO SPLIT WITHIN THE CIRCUITS ON THESE POINTS, AND THE DECISION BY THE ELEVENTH CIRCUIT IS IN COMPLETE ACCORD WITH THE DECISION OF THIS COURT IN GRIFFIN V. OCEANIC CONTRACTORS, INC.

Hibernia would have this Court grant certiorari simply to review questions of fact

which it did not raise at trial, or which were decided adversely to Hibernia. There is simply nothing more to the Petition herein, despite the grief expressed by Hibernia.

The District Court was quite obviously correct in finding that Hibernia, as owner of the vessel, was liable for the earned wages of the crew under the clear wording of 46 U.S.C. §596. Hibernia admitted such in its opening statement at trial, and has not contended otherwise. The District Court was likewise quite obviously correct in finding that Hibernia withheld the earned wages of the crew "without sufficient cause," and Hibernia did not challenge that finding on appeal. The District Court was also correct in awarding penalty wages mandated by §596, at two days pay for each day Hibernia withheld the earned wages without sufficient cause, where the seamen were engaged upon a merchant vessel under a contract calling for their employment

aboard the vessel in foreign trade for a period of one year. The Eleventh Circuit correctly affirmed following clear precedent, instructing the District Court to modify its judgment in order to accrue the penalty wages through the date when Hibernia ultimately relented in its obstinance and made payment to the crew of the earned wages it never contested. This Court has affirmed the award of penalty wages under §596 in prior cases involving substantially the same facts. Pacific Mail S.S. Co. v. Schmidt, 241 U.S. 245 (1916); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982).

Hibernia argued much grief over the harshness of the statutory penalty. However, in considering such argument it must be kept in mind that Hibernia was the vessel owner which withheld the earned wages of the crew without sufficient cause. It was Hibernia, and Hibernia alone which controlled the

accrual of penalty wages mandated by the statute. It could have paid the earned wages before suit was filed, and this action would never have been brought. It could have paid the earned wages shortly after the filing of suit, and clearly no penalty would have been applied. It could have paid the earned wages after the deposition of Captain Chung twenty-two days later, and the statutory penalty would have been nominal. Hibernia could have paid the earned wages when it conceded its liability for them in opening statement; likewise, it could have paid the earned wages before prosecuting its appeal to the Eleventh Circuit, but it did not. Hibernia is at a loss for words to explain its obstinance in withholding payment of uncontested earned wages for more than three years. Clearly, Hibernia's grief is self-imposed.

(a) The contention that individual contracts of employment for each crewman are a necessary condition to the award of penalties was not properly raised at trial and was correctly rejected on its merits by the Court of Appeals.

Hibernia defended this action on three basic propositions before and during trial, as well as in its post-trial memoranda and its motion for new trial, all prior to oral argument of post-trial motions in the District Court on November 23, 1983.

The first of those positions was simply that it did not owe the wages of the crew. However, this position was plainly untenable in light of the fact that all of the federal statutes dealing with seamen's wages, including 46 U.S.C. §596, placed squarely on the vessel owner the obligation for paying wages of the crew. Indeed, its counsel conceded in opening argument at trial that the seamen should be paid their earned wages. [Trial transcript p. 20]

Second, Hibernia argued that it had "sufficient cause" for withholding payment of the earned wages of the crew which it did not dispute. The burden was clearly upon Hibernia to prove "sufficient cause" for withholding earned wages within the meaning of §596, in order to avoid mandatory application of the penalty provision. The Plaintiffs clearly did not have the burden of proving lack of sufficient cause. Arguelles v. U. S. Bulk Carriers, Inc., 406 F. 2d 1065 (3rd Cir. 1969), affirmed, 400 U.S. 351 (1970).

Hibernia failed miserably in its effort to meet this burden of proof. The evidence at trial was that Hibernia made a deliberate, willful decision not to pay the earned wages while it was paying many other claims related to the crew, simply because it desired to avoid some lawsuits, but not others; that it wished to avoid some liens against its vessel, but not others; or simply that it wished to

hold onto the money while it litigated its indemnity claims against other defendants. [Trial transcript pp. 245, 273-275, 296-302, 591-592.]

This question of fact was resolved against Hibernia by the District Court, supported by substantial evidence, and not even contested on appeal to the Eleventh Circuit.

Finally, Hibernia argued that the wages in question were earned while the crew was on "port time" and not subject to the provisions of §596. The District Court rejected this contention, as a question of fact, in reaching the judgments rendered herein. That question of fact was correctly affirmed by the Eleventh Circuit, as discussed below.

The foregoing contentions by Hibernia were rejected by the District Court when it announced during argument of post-judgment motions on November 23, 1983, that the

substantive portions of its original findings and conclusions would stand. Months later, Hibernia employed new attorneys, who prosecuted the appeal to the Eleventh Circuit and who now represent it on this Petition. Only days before the District Court completed and filed its corrected opinion and judgment, Hibernia's new counsel filed an additional motion for new trial and memoranda including a document labeled "Conditions Precedent to the Award of Penalty Wages," raising novel questions of fact and legal contentions not previously before the Court.

For the first time in that filing Hibernia raised, as a question of fact, the contention that the individual Plaintiff crewmen had not signed separate articles of employment. Also for the first time, Hibernia challenged the applicability of the contract under which the crew were employed (Plaintiff's Exhibit 10).

Finally, Hibernia contended for the first time in these new filings that §596 requires the actual completion of a voyage as a condition to the award of penalty wages.

Many decisions teach that the courts below should not be put in error upon new factual or legal theories not properly presented to the trial court for its consideration. Stanley Education Methods, Inc. v. Becker GPA Review Course, Inc., 539 F. 2d 393 (5th Cir. 1976). Questions not properly raised and preserved in the trial court should not be considered on appeal, much less on Petition for Certiorari to this Court. Morrow v. Greyhound Lines, Inc., 541 F. 2d 713 (8th Cir. 1976); Christenson v. Farmer's Insurance Exchange, 540 F. 2d 472 (10th Cir. 1976); Caribbean Federal Lines v. Dahl, 315 F. 2d 371 (5th Cir. 1963), cert. denied 375 U.S. 381 (1963).

Hibernia argued to the Eleventh Circuit that individual contracts of employment signed by each crewman were a condition to the award of statutory penalty wages. The Eleventh Circuit properly disposed of that argument as without merit:

> "Hibernia contends that each seaman must have signed an agreement before he is entitled to receive penalty wages for non-payment... Hibernia urges that we reverse the award of penalty wages for this reason. We disagree.
>
> As an initial matter, we note that we have found no cases supporting the proposition that a seaman claiming penalty wages must have signed articles conforming to the requirement of 46 U.S.C. §§563 or 564. Kistakis v. Liberian SS STAR, 304 F. 2d 356 (4th Cir. 1962), cited by the Bank, lends no support to its position. Kistakis involved efforts by a foreign seaman aboard a foreign vessel to have articles declared void for failure to comply with the provisions of 46 U.S.C. §564.... The Court in no way intimated that signed articles were a prerequisite to the recovery of penalty wages; indeed, the Court observed that the penalty wage statute applied to foreign seamen aboard foreign vessels even though they were not required to sign articles as prescribed by 46 U.S.C. §594. Id. at

358-359.

> Moreover, we note that the purpose of the signed articles requirement is to protect the seaman. Southern SS Co. v. N.L.R.B., 120 F. 2d 505, 508 (3rd Cir. 1941).... The Supreme Court has recognized that the absence of a signed agreement does not defeat a seaman's right to wages, but rather allows a seaman to recover the highest wages paid at the port of embarkation and subjects the master who took him aboard to certain penalties. Kossick v. United Fruit Co., 356 U.S. 731, 81 Supreme Court 886, 890n.4,6 L.Ed. 2d 56 (1961); See 46 U.S.C. §§564, 578. The Kossick court also recognized the enforceability of oral contracts for hire in maritime law. Id. It would be anomalous then, to conclude that a seaman who was not party to written articles automatically forfeits his entitlement to penalty wages. Accordingly, we hold that the crew members' failure to execute individual agreements with the vessel owner does not prohibit an award of penalty wages." [774 F. 2d at 1049-1050.]

The resolution of this issue by the Eleventh Circuit was clearly correct under the decisions of this Court. It is mystifying that Hibernia would even raise the issue for review before this Court, when it still can

cite no authority in support of this proposition.

Also mystifying is Hibernia's continued reargument and emphasis upon another contention of fact, that the contract was conditioned upon finalization of the vessel's sale by Hibernia. Quite obviously, the District Court did not hold that the contract was binding on the parties when it was executed in June, 1981, by agents for the vessel and the crew. The District Court held that the contract became effective when Hibernia later authorized the crewing of the vessel in July, 1981, and based its findings of fact as to the crew upon that contract.

The Eleventh Circuit properly relegated its affirmance of that factual finding to a footnote:

> "The court below found that the agreement signed by Han Seung and Overseas was the contract by which the crew was employed. The court also found that Hibernia had accepted the benefits of Mardikos

> as its agent and agent for the vessel throughout the transaction thereby requiring it to stand liable as principal for debts incurred by the agents. Hibernia challenges neither of these findings on appeal, but does argue that the contract was conditional upon sale of the vessel. This condition, however, was quite obviously waived by the conduct of the parties." [774 F. 2d at 1051, fn. 10. Emphasis added.]

That contract was accepted by all parties at trial and found by the District Court to be the contract under which the crew were employed. The wages earned by the crew were calculated by the District Court under the terms of that contract, and such earned wages were ultimately paid by Hibernia based upon that calculation. The breach of that contract by Hibernia and its failure to pay the earned wages without sufficient cause warranted the imposition of statutory penalties of which it now complains. Such questions of fact need not be further reviewed by this Court.

(b) This Court need not consider the recodification of the statute in question, effective after the decision of the District Court, nor other matters extraneous to the record herein.

Hibernia argues significance to the wording of the recodification of §596, into 46 U.S.C. §10313. That recodification became effective August 26, 1983, after the entry of judgment by the District Court and long after the accrual of the cause of action herein.

The recodification of a large portion of Title 46 in 1983 was a staff project of the House Merchant Marine and Fisheries Committee. In recodifying Title 46, much new wording was used and some obvious changes were made. For example, the substance of §596 is now spread among several sections of the new code. By the wording selected for §§10501-10504, seamen aboard vessels engaged in the inland rivers and Great Lakes trades now have a penalty wage remedy, whereas some earlier decisions found them to be excluded from the wording of §596.

Mahar v. Gartland S.S. Co., 62 F. Supp. 158 (D.C.N.Y. 1945).

In recodifying §596, the legislative drafters used new words, which may result in a different outcome in some cases, regardless of the committee staff's expressed intent. It is clearly unnecessary for this Court to determine whether the outcome below might have been different under the new statute.

It is likewise unnecessary that this Court consider matters entirely extraneous to the record in this case, including that document labeled "Convention Concerning Seamen's Article of Agreement" [included in Petitioner's Appendix A, never ratified by the United States]. Hibernia argues that document in support of its position and yet, incredibly, it is contained nowhere in the record before the District Court or the Court of Appeals. The first mention of the document is in the Petition for Certiorari. Reliance upon

such extraneous material is a substantial imposition upon the Court and the opposing parties.

c. This Court need not review the Petitioner's unsuccessful factual argument that the crew were on simple port time. The award of penalty wages, as affirmed and modified by the Eleventh Circuit, is fully consistent with Griffin v. Oceanic Contractors, Inc., and all Circuit decisions considering this question.

In its struggle to escape the penalties it imposed upon itself, Hibernia lumps together its unsuccessful factual contention that the crew were on simple port time, with its belated contention that the completion of a voyage was a condition necessary to the imposition of penalties under the statute, which was rejected by the Eleventh Circuit. Neither merits consideration by this Court.

Hibernia opens its argument for allowance of the writ with a quote from Pacific Mail S.S. Co. v. Schmidt, 241 U.S. 245 (1916), taken entirely out of context. In that decision this Court affirmed the award of

penalty wages under the predecessor of §596. In so affirming the award, the Court made note of the fact that the Plaintiff had been paid wages earned during the voyage which had been completed. His wages in dispute were earned in work on board the vessel in port, in preparation for a forthcoming voyage. In refusing to disturb the findings of the District Court and the decision of the Court of Appeals that such wages were within the scope of the statute, this Court stated:

> "No new articles had been signed, and it would seem on the allegations of the libel, coupled with the admitted facts, that the libellant's legal standing was under an oral contract for a few days in port while hoping to be reshipped. It seems to us a very strong thing to say that any fair construction of the facts brings the case within the act. But, as the two courts have agreed upon this proposition also, and as the writ would not have been granted to reopen the inquiry into those particular facts, we assume that upon this also they were right."
> [241 U.S. at 250. Emphasis added.]

The facts in the present case are much stronger. The crew was engaged upon the vessel under a contract calling for their employment for a year, operating the vessel on foreign voyages. They had the vessel ready to sail on a foreign voyage and cargo waited at the dock. The voyage was frustrated by the actions of Hibernia and the other parties, completely beyond the control of the crew.

A reading of all of the cases interpreting §596 will disclose that the references in the section to vessels engaged in coasting voyages or foreign voyages are only intended to define the type of vessel and the type of intended trade to which the section refers. Such wording merely excludes vessels trading on inland rivers, which are not covered. Seamen employed on vessels engaged in coastwise and foreign trade are frequently subject to discharge from the vessel at points far from their home (as were the crew in this

case). Congress clearly intended to impose penalty wages under §596 upon vessel owners who wrongfully withhold the wages of such seamen. Any other reading of the statute is plainly inconsistent with many decisions in which penalties have been awarded.

The wording of the statute does not mandate the completion of a voyage as a condition to the imposition of penalty wages. Clearly, the statute speaks in the disjunctive when referring to the time for payment of earned wages, which is either the completion of the engagement for which the seaman had contracted, or the time at which the seaman is discharged, "whichever first occurs." The statute further provides:

> "...and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him."

The Respondents in the present case were clearly discharged from the vessel and from

their one-year contract of employment by Hibernia, the vessel owner, which refused to pay any of the wages earned by them.

The Eleventh Circuit was clearly correct in affirming the award of penalties in this case, following the decisions of the Fifth Circuit in which penalty wages were assessed in favor of seamen who had signed one-year contracts to serve aboard vessels, but whose wages were earned while the vessel remained in port, including Griffin v. Oceanic Contractors, Inc., 664 F. 2d 36 (5th Cir. 1981), affirmed as modified, 458 U.S. 564 (1982); and Caribbean Federal Lines v. Dahl, 315 F. 2d 370 (5th Cir. 1963), cert. denied, 375 U.S. 381 (1963).

In arguing that this Court should grant certiorari to reopen the inquiry into this factual determination, Hibernia makes the overly broad and incorrect statement that penalties cannot be awarded upon wages earned

while a seagoing vessel is in port. Hibernia contends that the District Court and the Eleventh Circuit should have found that the Respondents were employed on "port time," relying on the Fourth Circuit decisions in Compton v. Alton S.S. Co., 608 F. 2d 96 (4th Cir. 1979), and Eaton v. S.S. EXPORT CHALLENGER, 376 F. 2d 725 (4th Cir. 1967). However, those decisions define "port time" as simply the day to day employment of a seaman aboard a ship in port, where the vessel is not contractually bound to continue such employment beyond the day in question, nor is the seaman contractually bound to sail with the vessel.

The Eleventh Circuit very properly distinguished those decisions from the present action, upon their facts:

> "We think our position is reconcilable with the Fourth Circuit's cases decided under the port-time doctrine. The court below found that the crew's service aboard the M/V CARMEN A was governed by the terms of an employment

> contract. Although it was not executed individually by the crew members, it was nonetheless a contract. Both Compton and Eaton involved seamen whose service aboard a vessel had terminated according to their signed articles. Both had been paid wages due under the terms of their articles, and both had claimed additional amounts due for periods not covered by any agreement calling for the service aboard a vessel. Hence, even assuming we were to adopt the port-time doctrine, it would not apply to this case."
> [774 F. 2d at 1051.]

The Eleventh Circuit was very correct in making that factual distinction. In Compton the plaintiff seaman was paid all of the wages earned during his contract of employment, and he was discharged from the vessel. He then spent about a week at home, during which he performed no work and did not go to the vessel. He then rejoined the ship under a new contract of employment, and was paid all of the wages earned from the time of rejoining the vessel until discharge. The seaman's claim there was actually for unearned wages, for the time he did not work, which he claimed

were owed under his union contract. During the time he claimed wages were due, he was not under any contractual compulsion to return to the vessel, nor was the vessel under any contractual obligation to reemploy him. The Court correctly held that such were not earned wages within the contemplation of the statute where articles were neither in fact signed, nor required, nor was any work performed.

Likewise, the decision in Eaton v. S.S. EXPORT CHALLENGER, supra, is factually different from the present action. There, the seaman had been discharged from his employment and "was paid all of his earned wages and signed off from the foreign articles." On the day in question, after discharge, the plaintiff was on "port time," which the Court correctly defined as "day to day employment aboard ship in port" when there was no contractual obligation for continued employment. On the one day that the plaintiff did work, he

became ill, left the ship and was thereafter paid maintenance and cure. The Court correctly denied penalties in that case since the one day's wages were not earned at a time when a contract of employment was in effect, nor was any claim made that a contract of employment should have been entered into for that day.

The above cases are clearly different upon their facts than those which were followed by the Court below. In Caribbean Federal Lines v. Dahl, supra, which affirmed the decision of the Southern District of Alabama in Dahl v. the S.S. AMIGO, 202 F. Supp. 890 (S.D.Ala. 1962), the factual similarity to the case of the M/V CARMEN A is remarkable. The seamen there were Norwegian citizens who were flown to Pascagoula, Mississippi, to join the vessel. Their work consisted of making repairs and assisting in unloading cargo. The vessel then lost the power of its engine, necessitating that it be

towed to Mobile, Alabama, for repair. Upon arrival in the Port of Mobile, the seamen were paid all of the wages earned upon the vessel up to that point. All of the wages in dispute, which were withheld from them by the owner without sufficient cause, were earned by them during the six weeks they worked on board the vessel while it was under repair at Alabama Dry Dock & Shipbuilding Company. [202 F. Supp. at 891, 892.] Those wages were earned in preparation for a contemplated voyage from that Port, while the seamen were employed on a one-year contract. However, the ship was laid up, the voyage never made, and those seamen were discharged. The District Court correctly applied §596 to their claim, awarding penalties. On appeal, the award was affirmed by the Fifth Circuit, which specifically rejected a contention that such was "port time" or day to day employment, and this Court denied certiorari.

Penalty wages under §596 have been awarded by other circuits in cases with facts strikingly similar to those presented herein. One such decision is Williams v. Great Lakes Dredge & Dock Co., 726 F. 2d 278 (6th Cir. 1984). The two plaintiffs in that case were flown from the United States to work on a dredge operating on a project in a port in Dubai, under a verbal contract, at the time the dispute as to wages arose. The District Court found that the vessel owner had withheld wages earned aboard the dredge while it remained in that port, without sufficient cause, awarding substantial penalties to each plaintiff. In affirming the award of penalty wages, the Sixth Circuit affirmed the factual findings that the defendant had acted without sufficient cause and rejected the defendant's contention that the seamen involved, and the work being done, and the vessel, were not of the type contemplated by §596.

Indeed, the most recent decision of this Court dealing with §596 is Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982), where this Court held that penalties were mandated under the statute upon facts also strikingly similar to those in the present action. The plaintiff, Griffin, was flown from the United States to Antwerp, Belgian, where he joined the defendant's vessel which was then in the harbor for repairs. All of his wages were earned and his work done in preparing the vessel for a voyage. Griffin, because of injury, never made the voyage because he was discharged from the vessel and sent home for medical treatment. This Court affirmed the award of penalties upon such unpaid wages by the District Court, which had been affirmed by the Fifth Circuit, modifying the lower court decision to hold that the statute allowed no discretionary cutoff in the running of penalty wages and that such penalties were owed for

"each and every day" until the earned wages were actually paid.

To argue that the question of a voyage in Griffin was simply overlooked would be to charge the parties, the District Court, and the Fifth Circuit with incredible stupidity. We realize that the writ in that case was not granted to reopen that factual question. However, there is no decision by this Court which remotely suggests that certiorari should be granted in the present case, nor is there any split of authority within the circuits upon this issue.

The mere fact that Hibernia has imposed a harsh penalty upon itself, by continuing to wrongfully withhold the earned wages of the Respondents herein for nearly three years after this Court's decision in Griffin, clearly affords no reason to grant the writ in this case.

II

HIBERNIA POSTED AN UNDERTAKING HEREIN, IN LIEU OF A BOND, SOLELY FOR THE PURPOSE OF OBTAINING THE RELEASE OF ITS VESSEL FROM ATTACHMENT, AND TO AVOID SALE OF THE VESSEL AT JUDICIAL AUCTION TO SATISFY THE EARNED WAGES OF THE CREW. SUCH ACTION BY HIBERNIA CLEARLY WAS NOT PAYMENT OF THE EARNED WAGES INTO COURT AND HAS NO RELEVANCE TO THE ACCRUAL OF PENALTY WAGES UNDER THE STATUTE.

Hibernia now brings to this Court its frivolous contention that the posting of an undertaking herein, which was done solely for the purpose of releasing the vessel from in rem attachment by the crew, could possibly be considered the equivalent of payment of earned wages to the crew, or payment of wages into the Court.

The Eleventh Circuit saw through the frivolity of this contention and rejected it:

> "Appellant's suggestion would allow a vessel owner whose position borders on the frivolous to continue to litigate and withhold wages without fear of an increased penalty. Nothing in the language of the statute, or the underlying policies, supports this...
>
> Moreover, we note that Hibernia posted the undertaking in order to

> secure release of the vessel, which had been seized with the commencement of this litigation. We can discern no reason why this action should have tolled the penalty wage statute, nor have we found any authority to support such a proposition."

At the commencement of this action, the Respondents had attachment issue in rem against the vessel, as was their right, in order to secure recovery of their wages earned in the service of the vessel. Had Hibernia not filed its claim to the vessel and posted a sufficient guarantee of in rem claims to secure its release, the Respondents clearly could have had the vessel sold under the provisions of Supplementary Admiralty Rule E(9). Funds from the sale of the vessel would then have been available to satisfy the earned wages of the crew.

On November 13, 1981, Hibernia submitted an undertaking to guarantee in rem claims against the vessel, along with a motion seeking an order for the release of the

vessel. Hibernia did not then pay any funds into the registry of the Court. Its only purpose in submitting its own undertaking in lieu of a bond was to avoid the considerable expense of paying a separate surety to issue the bond for release of the vessel normally required by Supplemental Rule E(5)(a) or (5)(b).

The undertaking filed by Hibernia was nothing more than its agreement that it would later pay any judgments in rem against the vessel, regardless of whether Hibernia was liable in personam for such claims. The agreement to pay is expressly conditioned upon the entry of final judgment, after appeal, in favor of the Plaintiffs against the vessel, and expressly reserved Hibernia's right to further litigate the action "as if the vessel had been released by the posting of a bond."

The filing of this undertaking was nothing more than an action by Hibernia to

avoid payment of earned wages to the crew at that time, whether from funds it then could have deposited into the registry of the Court, or from funds which would have come from the sale of the vessel. It should be noted that Hibernia immediately thereafter sold the vessel to another buyer for $350,000.00 cash [Trial transcript p. 480]. Hibernia did not pay that fund, nor any other sums into the registry of this Court.

Hibernia now pretends that its actions taken to avoid payment of earned wages owed the crew can somehow be equated to the payment of wages into the registry of the Court. It never contested its liability for wages earned by the crew and owed to them under their contract of employment. Hibernia so admitted in its opening statement at trial. How can it now pretend that it was deprived of its right to trial on an issue which was not in dispute?

If Hibernia had paid the undisputed earned wages into the registry of the Court, we agree that such action would have tolled the accrual of penalty wages as of the date of such payment. Southern Steamship Co. v. Firipis, 285 F. 2d 651 (4th Cir. 1960); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982). Had that payment into Court been made, the crewmen could have obtained a prompt order for payment of the earned wages which were not disputed. We could not obtain an order for payment upon the undertaking conditioned upon the litigation of all issues through final appeal, which was made by Hibernia simply to avoid parting with any money.

Hibernia's action in posting its undertaking for the release of its vessel is not remotely similar to the deposit of funds required by Rule 67 of the Federal Rules of Civil Procedure, which is clear in its terms:

> "DEPOSIT IN COURT. In an action in which any part of the relief sought is a judgment for a sum of money... a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum...Money paid into court under this rule shall be depositied and withdrawn in accordance with the provisions of Title 28, U.S.C. §§2041 and 2042;...or any like statute."

The purpose of Rule 67 is clearly to permit the deposit of undisputed funds into the Court, to stop the accrual of interest or penalties, whether imposed by contract or law. Rule 67 also permits the plaintiff to withdraw and receive payment of amounts which are not in dispute, while preserving the rights of the parties to litigate or appeal disputed elements of the claim. Moore's Federal Practice, ¶¶67.01-67.02; Shaver Transportation Co. v. Chamberlain, 399 F. 2d 893 (9th Cir. 1968). In Fassbinder v. Pennsylvania R.R., 233 F. Supp. 574 (W.D.Pa. 1964), the Court held that the filing of a notice by the defendant, that it would pay the plaintiff's judgment in full,

would not itself stop the running of interest on the sum due. The Court held that Rule 67 and 28 U.S.C. §2041, taken together, are clearly broad enough to authorize the payment of money into the Court to stop the accrual of interest or penalties, but that until the money is actually paid or deposited with the Court, interest continues to accrue.

Hibernia paid no money into Court when it obtained the release of its vessel. It paid no money into Court when it conceded at the opening of the trial that it owed the earned wages to the crew. Its contention that its right to trial was impaired is frivolous, and plainly should be rejected.

III

HIBERNIA CONTENDS THAT ITS RIGHT TO APPEAL THE AWARD OF PENALTIES WAS PREJUDICED BY THE RESULTS OF ITS OWN ACTIONS IN CONTINUING TO WRONGFULLY WITHHOLD PAYMENT OF EARNED WAGES WHICH IT DID NOT CONTEST. SUCH IS AN ABSURD MISREPRESENTATION OF THE FACTS AND THE RECORD HEREIN, NOT WORTHY OF CONSIDERATION BY THIS COURT.

Such are strong words; but anyone familiar with the record herein and the conduct of Hibernia would recognize them to be well-deserved.

Once again, Hibernia has attempted to purvey a gross misconstruction of the decisions of this Court in Pacific Mail S.S. Co. v. Schmidt, 241 U.S. 245 (1916), and Griffin v. Oceanic Contractors, Inc., 458 U.S. 564 (1982). Further, perhaps inadvertently, by omitting that portion of the District Court opinion which contains a detailed itemization of the earned wages awarded each seaman, Hibernia would leave this Court with the impression that it was unable to determine the amount that it owed in earned wages, while it prosecuted its appeal with reference to the penalties.

As previously stated, Hibernia never contested its liability for the wages earned by the crew under the terms of their contract

of employment, either at trial or on appeal. However, prior to prosecuting its appeal to the Eleventh Circuit, Hibernia filed an amended and increased letter of undertaking, along with its multibillion dollar financial statement, for the purpose of obtaining an order from the District Court staying execution on all judgments pending appeal. The District Court entered the stay order without requiring a costly supersedeas bond. Such action was taken only to avoid payment of any portion of the judgment.

On appeal, Hibernia contested only the award of penalties, conceding the correctness of the earned wage award made by the District Court. Upon receipt of Hibernia's brief framing the issues on appeal to the Eleventh Circuit, we promptly filed motions for partial relief from the stay order, to the extent of the earned wages not in dispute, so that the crewmen might finally obtain payment of their

wages. Even then, Hibernia made no effort at payment.

Ultimately, through a change of heart which is thoroughly unexplained herein, Hibernia made payment of the wages simply by sending a check to counsel for the Respondents. That wage payment was finally received on February 21, 1985, and we filed the partial satisfactions of judgments which are contained in Appendix B to this brief. The act which finally stopped the accrual of penalties was so simple as to be startling, and fully preserved the right of Hibernia to appeal those issues in dispute. Why did Hibernia not do so earlier? We do not know.

The Eleventh Circuit was plainly correct in affirming the award of penalty wages and holding that the District Court was in error in terminating the accrual of penalties as of the trial date. Hibernia quite obviously could produce no factual evidence or legal

theory under which its continued withholding of wages beyond the trial date and during appeal was with reasonable cause. Hibernia clearly could have paid the wages and prosecuted the appeal on the issue in dispute. Chung, Yong Il v. Overseas Navigation Co., Ltd., 774 F. 2d at 1053-1054.

This Court in Griffin made it clear that the statute speaks of payment, and that is the payment of earned wages which stops the running of the penalties provided by §596:

> "...the unadorned language of the statute dictates that the master or owner 'shall pay to the seaman' the sums specified 'for each and every day during which payment is delayed.' The words chosen by Congress, given their plain meaning, leave no room for the exercise of discretion either in deciding whether to exact payment or in choosing the period of days by which the payment is to be calculated." [458 U.S. at 570. Emphasis in text.]
>
> "If the statute is applied literally, Petitioner would receive twice this amount [his daily wage rate] for each day after his discharge until September 17, 1980, when Respondent satisfied the District

Court's judgment." [458 U.S. at 574.]

The decision in Griffin makes no reference to the trial date, since that would be immaterial under §596. The decision points out at footnote (9) that not even the entry of judgment or the prosecution of an appeal, by themselves, will toll the running of the penalty unless delays in payment beyond that point can be explained by sufficient cause:

> "9. Respondent assumes that the penalty would run until September 17, 1980, since that was the date on which it finally paid the Petitioner the $412.50. Brief for Respondent 17. Petitioner on the other hand, apparently assumes that the penalty period expired on May 6, 1980, the date of the District Court's judgment. Brief for Petitioner 19. Under our construction of the statute, the District Court's entry of judgment will not toll the running of the penalty period unless delays beyond that date are explained by sufficient cause. See Pacific Mail S.S. Co. v. Schmidt, 241 U.S. 245 (1916)." [458 U.S. at 574.]

Hibernia does not mention that there has been a significant change in the procedural

rules since the decision in Pacific Mail S.S. Co. v. Schmidt, supra, in 1916. At that time, the defendant could not partially satisfy the judgment of the District Court and still pursue an appeal on that part of the judgment it disputed. Thus, the defendant there could not pay in the Court the undisputed earned wages without loss of its right to pursue an appeal on the applicability of the penalties. This procedural trap was the only cause found sufficient for stopping the accrual of penalties during appeal. Pacific Mail S.S. Co. v. Schmidt, 241 U.S. at 250-251.

The adoption of Rule 67 of the Federal Rules of Civil Procedure in 1937 clearly eliminated the problem facing the defendant in Pacific Mail. That rule clearly permits any party to pay into the district court the sum of money which it does not dispute.

Clearly, Hibernia and its battery of attorneys could have read the clear wording of

Rule 67 and taken advantage of its provisions at any time during the pendency of this case in the District Court or the Eleventh Circuit. We agree that payment into Court would have stopped the accrual of penalties, because the crew would then have been able to obtain prompt payment of their earned wages. Southern SS Co. v. Firipis, 285 F. 2d 651 (4th Cir. 1960), cert. denied 365 U.S. 869 (1961). Surely, Hibernia cannot profess that it suffered any confusion as to the simple remedy provided by Rule 67. Obviously it was also aware that it could simply make payment of the earned wages, as it ultimately did on February 21, 1985, in exchange for partial satisfactions of the judgment (or partial releases before trial). Neither would prejudice its rights to trial or appeal on issues in dispute.

When Hibernia finally made payment of wages, the amounts paid came directly from the

appendix to corrected opinion of the District Court, where the Court set out the exact amount earned by each crewman. However, in its Petition to this Court Hibernia conspicuously omitted that part of the District Court opinion. We assume that the omission was inadvertent, but Hibernia's attempts to convey the impression that it did not know how much to pay, or how to pay it, is simply not accurate. On this issue, also, the writ should be denied.

IV

THE ELEVENTH CIRCUIT'S DECISION, DENYING HIBERNIA INDEMNITY FOR PENALTIES, DOES NOT MERIT REVIEW BY THIS COURT.

Of course, it is of no concern to these Respondent crewmen whether Hibernia is granted indemnity against other parties. However, a grant of the writ on this question would likely only delay entry of their final judgment.

The statutory penalties imposed upon Hibernia are solely for its conduct as owner of the vessel. That conduct, as well as the penalty accrual, came only after Hibernia had declared E.F.D. Capitol Group in default of its contract, and had converted the $50,000.00 earnest money deposit as liquidated damages. The Eleventh Circuit affirmed Hibernia's right to indemnity for all liabilities accruing before the contract default, but not those accruing by reason of its own actions thereafter.

Upon the facts and the equities in this case, it appears that the Eleventh Circuit was correct.

CONCLUSION

The opinion of the Eleventh Circuit, affirming the award of statutory penalties under 46 U.S.C. §596 and directing that those penalties accrue until payment of earned wages

by the vessel owner, correctly followed the decisions of this Court. The decision of the Eleventh Circuit is not in conflict with the decision of any other circuit on any material point. The Petitioner seeks only to have this Court review a question of fact on which this Court has denied certiorari in many previous cases. The writ clearly should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of March, 1986, three copies of the foregoing Brief of Respondents in Opposition to Petition for Writ of Certiorari were served by United States Mail, postage prepaid, pursuant to Rule 28.3 of the Rules of the Supreme Court of the

United States, on opposing counsel as indicated below.

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Accordingly, all parties required to be served have been served.

APPENDIX A

Appendix calculating wages awarded to each individual crewman, which was incorporated in and a part of the Corrected Findings of Fact and Conclusions of Law entered by the District Court on February 9, 1984.

APPENDIX

(In Accordance with Plaintiff's Exhibit 10)

(1) CHUNG, YONG IL

1A.	Basic Wage	$ 1,380.00
1F.	Command Allowance. .	100.00
2B.	Working Allowance. . (10% of 1A + 1F)	148.00
	Monthly Wage	1,628.99
	Daily Rate	54.27

a)	July (3/10 of month) . .	$ 444.00
b)	August	1,480.00
c)	September	1,628.00
d)	Annual Leave and Yearly Bonus . . . . (1B + 1C) (13% of 1A x 2.3 mos)	412.62
e)	Severance Pay (2 x 1A) .	2,760.00
	SUBTOTAL	6,724.62
	Pre-judgment Interest - Earned Wages	1,357.82
f)	October Wages (2B) . . .	148.00
	Pre-judgment Interest - Oct. Wages	28.63
	TOTAL	$ 8,259.07

(2) O, WEON BOG

1A.	Basic Wage . .	$ 940.00	
1F.	Command Allowance.		
2B.	Working Allowance.	94.00	
	Monthly Wage . .	1,034.00	
	Daily Rate . . .	34.47	
a)	July (3/10 of month) . .		$ 282.00
b)	August		940.00
c)	September.		1,034.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		281.06
e)	Severance Pay (2 x 1A) .		1,880.00
	SUBTOTAL		4,417.06
	Pre-judgment Interest - Earned Wages		891.88
f)	October Wages (2B) . . .		94.00
	Pre-judgment Interest - Oct. Wages		18.18
g)	Penalty Wages (at 2 x daily rate) (10/1/81 through 2/7/83)		34,125.30
	TOTAL		$39,546.42

(3) IM, GYEONG CHEOL

1A.	Basic Wage . .	$ 640.00	
1F.	Command Allowance.		
2B.	Working Allowance.	64.00	
	Monthly Wage . . .	704.00	
	Daily Rate	23.47	
a)	July (3/10 of month) . .		$ 192.00
b)	August		640.00
c)	September.		704.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		191.36
e)	Severance Pay (2 x 1A) .		1,280.00
	SUBTOTAL		3,007.36
	Pre-judgment Interest - Earned Wages.		607.24
f)	October Wages (2B) . . .		64.00
	Pre-judgment Interest - Oct. Wages		12.38
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		23,235.30
	TOTAL		$26,926.28

(4) GANG, HAE LYONG

1A.	Basic Wage . .	$ 480.00	
1F.	Command Allowance.		
2B.	Working Allowance.	48.00	
	Monthly Wage . .	528.00	
	Daily Rate . . .	17.60	
a)	July (3/10 of month) . .		$ 144.00
b)	August		480.00
c)	September.		528.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		143.52
e)	Severance Pay (2 x 1A) .		960.00
	SUBTOTAL		2,255.52
	Pre-judgment Interest - Earned Wages		455.42
f)	October Wages (2B) . . .		48.00
	Pre-judgment Interest - Oct. Wages		9.28
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		17,429.00
	TOTAL		$20,197.22

(5) JO, YANG MYUNG

1A.	Basic Wage . .	$ 1,330.00	
1F.	Command Allowance.	100.00	
2B.	Working Allowance. (10% of 1A + 1F)	143.00	
	Monthly Wage . .	1,573.00	
	Daily Rate . . .	52.43	
a)	July (3/10 of month) . .		$ 429.00
b)	August		1,430.00
c)	September.		1,573.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		397.67
e)	Severance Pay (2 x 1A) .		2,660.00
	SUBTOTAL		6,489.67
	Pre-judgment Interest - Earned Wages		1,310.38
f)	October Wages (2B) . .		143.00
	Pre-judgment Interest - Oct. Wages		27.66
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		51,905.70
	TOTAL		$59,876.41

(6) YOU, BONG GIE

1A.	Basic Wage .	$ 940.00	
1F.	Command Allowance.		
2B.	Working Allowance.	94.00	
	Monthly Wage . .	1,034.00	
	Daily Rate . . .	34.47	
a)	July (3/10 of month) . .		$ 282.00
b)	August		940.00
c)	September.		1,034.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos).		281.06
e)	Severance Pay (2 x 1A) .		1,880.00
	SUBTOTAL		4,417.06
	Pre-judgment Interest - Earned Wages.		891.88
f)	October Wages (2B) . . .		94.00
	Pre-judgment Interest - Oct. Wages.		18.18
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		34,125.30
	TOTAL		$39,546.42

(7) YU, DONG JYU

1A.	Basic Wage . .	$ 640.00	
1F.	Command Allowance.		
2B.	Working Allowan	64.00	
	Monthly Wage .	704.00	
	Daily Rate . .	23.47	
a)	July (3/10 of month) . .		$ 192.00
b)	August		640.00
c)	September.		704.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos).		191.36
e)	Severance Pay (2 x 1A) .		1,280.00
	SUBTOTAL		3,007.36
	Pre-judgment Interest - Earned Wages.		607.24
f)	October Wages (2B) . . .		64.00
	Pre-judgment Interest - Oct. Wages.		12.38
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		23,235.30
	TOTAL		$26,926.28

(8) YI, HI UN

1A.	Basic Wage .	$ 480.00	
1F.	Command Allowance.		
2B.	Working Allowance.	48.00	
	Monthly Wage . . .	528.00	
	Daily Rate	17.60	
a)	July (3/10 of month) . .		$ 144.00
b)	August		480.00
c)	September.		528.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos).		143.52
e)	Severance Pay (2 x 1A) .		960.00
	SUBTOTAL		2,255.52
	Pre-judgment Interest - Earned Wages.		455.43
f)	October Wages (2B) . . .		48.00
	Pre-judgment Interest - Oct. Wages		9.28
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83).		17,424.00
	TOTAL		$20,192.23

(9) KIM, TEA IK

1A.	Basic Wage . . .	$ 940.00	
1F.	Command Allowance.	50.00	
2B.	Working Allowance. (10% of 1A + 1F)	99.00	
	Monthly Wage . .	1,089.00	
	Daily Rate . . .	36.30	
a)	July (3/10 of month) . .		$ 297.00
b)	August		990.00
c)	September.		1,089.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos) .		281.06
e)	Severance Pay (2 x 1A) .		1,880.00
	SUBTOTAL		4,553.06
	Pre-judgment Interest - Earned Wages		919.34
f)	October Wages (2B) . . .		99.00
	Pre-judgment Interest - Oct. Wages		19.15
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83).		35,937.00
	TOTAL		$41,511.55

(10) KIM, JEONG RO

1A.	Basic Wage . . .$	630.00	
1F.	Command Allowance.		
2B.	Working Allowancce	63.00	
	Monthly Wage . . .	693.00	
	Daily Rate	23.10	
a)	July (3/10 of month) . .		$ 189.00
b)	August		630.00
c)	September.		693.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		188.37
e)	Severance Pay (2 x 1A) .		1,260.00
	SUBTOTAL		2,960.37
	Pre-judgment Interest - Earned Wages.		597.75
f)	October Wages (2B) . . .		63.00
	Pre-judgment Interest - Oct. Wages.		12.19
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		22,869.00
	TOTAL		$26,502.31

(11) LEE BONG BUM

1A.	Basic Wage . . .	$ 490.00	
1F.	Command Allowance.		
2B.	Working Allowance .	49.00	
	Monthly Wage . . .	539.00	
	Daily Rate	17.97	
a)	July (3/10 of month) . .		$ 147.00
b)	August		490.00
c)	September.		539.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		146.51
e)	Severance Pay (2 x 1A) .		980.00
	SUBTOTAL		2,302.51
	Pre-judgment Interest - Earned Wages		464.92
f)	October Wages (2B) . . .		49.00
	Pre-judgment Interest - Oct. Wages		9.48
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		17,790.30
	TOTAL		$20,616.21

(12) YU, CHANG BOK

1A.	Basic Wage . . $	450.00	
1F.	Command Allowance.		
2B.	Working Allowance.	45.00	
	Monthly Wage . . .	495.00	
	Daily Rate	16.50	
a)	July (3/10 of month) .		$ 135.00
b)	August		450.00
c)	September.		495.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		134.55
e)	Severance Pay (2 x 1A) .		900.00
	SUBTOTAL		2,114.55
	Pre-judgment Interest - Earned Wages		426.97
f)	October Wages (2B) . . .		45.00
	Pre-judgment Interest - Oct. Wages		8.70
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83).		16,335.00
	TOTAL		$18,930.22

(13) IM, GWANG SU

1A.	Basic Wage . .	$ 410.00	
1F.	Command Allowance.		
2B.	Working Allowance.	41.00	
	Monthly Wage . .	451.00	
	Daily Rate . . .	15.03	
a)	July (3/10 of month) . .		$ 123.00
b)	August		410.00
c)	September.		451.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		122.59
e)	Severance Pay (2 x 1A) .		820.00
	SUBTOTAL		1,926.59
	Pre-judgment Interest - Earned Wages		389.01
f)	October Wages (2B) . . .		41.00
	Pre-judgment Interest - Oct. Wages		7.93
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		14,879.70
	TOTAL		$17,244.23

(14) KIM, GI HWI

1A.	Basic Wage . .	$ 360.00	
1F.	Command Allowance.		
2B.	Working Allowance.	36.00	
	Monthly Wage . . .	396.00	
	Daily Rate	13.20	
a)	July (3/10 of month) . .		$ 108.00
b)	August		360.00
c)	September.		396.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		107.64
e)	Severance Pay (2 x 1A) .		720.00
	SUBTOTAL		1,691.64
	Pre-judgment Interest - Earned Wages		341.57
f)	October Wages (2B) . . .		36.00
	Pre-judgment Interest - Oct. Wages		6.96
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		13,068.00
	TOTAL		$15,144.17

(15) JANG, HO SAM

1A.	Basic Wage . .	$ 300.00	
1F.	Command Allowance.		
2B.	Working Allowance.	30.00	
	Monthly Wage . . .	330.00	
	Daily Rate	11.00	
a)	July (3/10 of month) . .		$ 90.00
b)	August		300.00
c)	September.		330.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		89.70
e)	Severance Pay (2 x 1A) .		600.00
	SUBTOTAL		1,409.70
	Pre-judgment Interest - Earned Wages		284.64
f)	October Wages (2B) . . .		30.00
	Pre-judgment Interest - Oct. Wages		5.80
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		10,890.00
	TOTAL		$12,620.14

(16) HAN, JONG YEOL

1A.	Basic Wage . . .$	630.00	
1F.	Command Allowance. .		
2B.	Working Allowance. .	63.00	
	Monthly Wage . . .	693.00	
	Daily Rate	23.10	
a)	July (3/10 of month) . .		$ 189.00
b)	August		630.00
c)	September.		693.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		188.37
e)	Severance Pay (2 x 1A) .		1,260.00
	SUBTOTAL		2,960.37
	Pre-judgment Interest - Earned Wages		597.75
f)	October Wages (2B) . . .		63.00
	Pre-judgment Interest - Oct. Wages		12.19
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		22,869.00
	TOTAL		$26,502.31

(17) SIN, GYEONG U

1A.	Basic Wage . . $	490.00	
1F.	Command Allowance.		
2B.	Working Allowance.	49.00	
	Monthly Wage . . .	539.00	
	Daily Rate	17.97	
a)	July (3/10 of month) . .		$ 147.00
b)	August		490.00
c)	September.		539.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		146.51
e)	Severance Pay (2 x 1A) .		980.00
	SUBTOTAL		2,302.51
	Pre-judgment Interest - Earned Wages.		464.92
f)	October Wages (2B) . . .		49.00
	Pre-judgment Interest - Oct. Wages		9.48
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		17,790.30
	TOTAL		$20,616.21

(18) BAK, YEONG HAN

1A.	Basic Wage . . $	450.00	
1F.	Command Allowance. .		
2B.	Working Allowance. .	45.00	
	Monthly Wage . . .	495.00	
	Daily Rate	16.50	
a)	July (3/10 of month) . .		$ 135.00
b)	August		450.00
c)	September.		495.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		134.55
e)	Severance Pay (2 x 1A) .		900.00
	SUBTOTAL		2,114.55
	Pre-judgment Interest - Earned Wages		426.97
f)	October Wages (2B) . . .		45.00
	Pre-judgment Interest - Oct. Wages		8.70
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		16,335.00
	TOTAL		$18,930.22

(19) SONG, IL SICK

1A.	Basic Wage . .	$ 300.00	
1F.	Command Allowance.	-	
2B.	Working Allowance. .	30.00	
	Monthly Wage . . .	330.00	
	Daily Rate	11.00	
a)	July (3/10 of month) . .		$ 90.00
b)	August		300.00
c)	September.		330.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		89.70
e)	Severance Pay (2 x 1A) .		600.00
	SUBTOTAL		1,409.70
	Pre-judgment Interest - Earned Wages		284.64
f)	October Wages (2B) . . .		30.00
	Pre-judgment Interest - Oct. Wages		5.80
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		10,890.00
	TOTAL		$12,620.14

(20) TAK, KIL JI

1A.	Basic Wage . . .	$ 560.00	
1F.	Command Allowance. .		
2B.	Working Allowance.	56.00	
	Monthly Wage . . .	616.00	
	Daily Rate	20.53	
a)	July (3/10 of month) . .		$ 168.00
b)	August		560.00
c)	September.		616.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). . .		167.44
e)	Severance Pay (2 x 1A) .		1,120.00
	SUBTOTAL		2,631.44
	Pre-judgment Interest - Earned Wages		531.33
f)	October Wages (2B) . . .		56.00
	Pre-judgment Interest - Oct. Wages		10.83
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		20,324.70
	TOTAL		$23,554.30

(21) JEO, YU ONG

1A.	Basic Wage . .	$ 600.00	
1F.	Command Allowance.		
2B.	Working Allowance. .	60.00	
	Monthly Wage . . .	660.00	
	Daily Rate	22.00	
a)	July (3/10 of month) . .		$ 180.00
b)	August		600.00
c)	September.		660.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). . .		179.40
e)	Severance Pay (2 x 1A) .		1,200.00
	SUBTOTAL		2,819.40
	Pre-judgment Interest - Earned Wages		569.29
f)	October Wages (2B) . . .		60.00
	Pre-judgment Interest - Oct. Wages		11.60
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		21,780.00
	TOTAL		$25,240.29

(22) SON, CHEOL GEUN

1A.	Basic Wage . . $	300.00	
1F.	Command Allowance.		
2B.	Working Allowance. .	30.00	
	Monthly Wage . . .	330.00	
	Daily Rate	11.00	
a)	July (3/10 of month) . .		$ 90.00
b)	August		300.00
c)	September.		330.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). . .		89.70
e)	Severance Pay (2 x 1A) . .		600.00
	SUBTOTAL		1,409.70
	Pre-judgment Interest - Earned Wages		284.64
f)	October Wages (2B) . . .		30.00
	Pre-judgment Interest - Oct. Wages		5.80
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		10,890.00
	TOTAL		$12,620.14

(23) LEE, JAE HO

1A.	Basic Wage . .	$ 560.00	
1F.	Command Allowance. .		
2B.	Working Allowance. .	56.00	
	Monthly Wage . . .	616.00	
	Daily Rate	20.53	
a)	July (3/10 of month) . . .		$ -0-
b)	August (6/10 of month) .		336.00
c)	September.		616.00
d)	Annual Leave and Yearly Bonus (1B + 1C) (13% of 1A x 2.3 mos). .		116.48
e)	Severance Pay (2 x 1A) .		1,120.00
	SUBTOTAL		2,188.48
	Pre-judgment Interest - Earned Wages		441.89
f)	October Wages (2B) . . .		56.00
	Pre-judgment Interest - Oct. Wages		10.83
g)	Penalty Wages (At 2 x Daily Rate) (10/1/81 through 2/7/83)		20,324.70
	TOTAL		$23,021.90